

From: [LERS, EOIR \(EOIR\)](#)
To: [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#); [Wilson, Amelia \(EOIR\)](#)
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**EXECUTIVE OFFICE FOR
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| Policy & Case Law Bulletin
June 1, 2018

Federal Agencies

DOJ

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [DHS Announces Additional Visas for Foreign Workers to Assist American Businesses at Risk of Failing](#)

On May 25, 2018, the Secretary of Homeland Security announced that an additional 15,000 H-2B temporary nonagricultural worker visas will be available for Fiscal Year 2018, in addition to the 66,000 visas already issued this year. "The H-2B temporary nonagricultural worker program was designed to serve U.S. businesses unable to find a sufficient number of qualified U.S. workers to perform nonagricultural work of a temporary nature."

DOS

- [DOS Releases the 2017 International Religious Freedom Report](#)

On May 29, 2018, DOS released the [International Religious Freedom Report for 2017](#), which covers the period between January 1 and December 31, 2017. "U.S. embassies prepare the initial drafts of country chapters based on information from government officials, religious groups, nongovernmental organizations, journalists, human rights monitors, academics, and others. The Office of International Religious Freedom . . . collaborates in collecting and analyzing additional information, drawing on its consultations with foreign government officials, domestic and foreign religious groups, domestic and foreign nongovernmental organizations, multilateral and other international and regional organizations, journalists, academic experts, community leaders, and other relevant U.S. government institutions."

First Circuit

- [Santos-Guaman v. Sessions](#)

No. 16-2204, 2018 WL 2327108 (1st Cir. May 23, 2018) (Asylum-Persecution)

The First Circuit vacated and remanded the case, holding that the IJ and Board erred by not applying a child-specific analysis to Santos-Guaman's claim that he suffered past persecution as a child. The court also instructed the BIA to address on remand Santos-Guaman's argument about government inaction—that although the Ecuadorian Constitution vests indigenous persons with several rights, these rights are not actively enforced by the government.

Second Circuit

- [Hong Fei Gao v. Sessions](#)

No. 16-2262-AG, 2018 WL 2372697 (2d Cir. May 25, 2018) (Credibility)

The Second Circuit granted the PFR, vacated the decisions of the BIA, and remanded, concluding that the IJ and BIA erred by substantially relying on certain omissions in the record related to medical treatment, the number of police reports, and mention of an arrest in a pastor's letter. The court clarified the requirements for adverse credibility findings, holding that "although the REAL ID Act authorizes an IJ to rely on 'any inconsistency or omission in making an adverse credibility determination,' even one 'collateral or ancillary' to an applicant's claims, the Act does not give an IJ free rein. The REAL ID Act does not erase our obligation to assess whether the agency has provided 'specific, cogent reasons for the adverse credibility finding and whether those reasons bear a legitimate nexus to the finding Thus, although IJs may rely on non-material omissions and inconsistencies, not all omissions and inconsistencies will deserve the same weight. A trivial inconsistency or omission that has no tendency to suggest a petitioner fabricated his or her claim will not support an adverse credibility determination." The court also held that asylum applicants are not required to list every incident of persecution on their I-589 statements, and that generally "omissions are less probative of credibility than inconsistencies created by direct contradictions in evidence and testimony."

- [Suriel v. Sessions](#)

No. 17-134, 2018 WL 2383182 (2d Cir. May 25, 2018) (unpublished) (CAT)

The Second Circuit granted the PFR and remanded, concluding that the BIA did not assess the sufficiency of the IJ's bases for determining that the Dominican government would acquiesce in Suriel's likely torture, and instead "merely substituted its own view of the facts." The court also concluded that the BIA's stated grounds for rejecting the IJ's acquiescence finding—that there was no evidence that any specific Dominican official may wish to harm Suriel and there was no evidence that the people Suriel fears have any contacts or connection with the Dominican government—were either legally erroneous or misstatements of the record amounting to legal error. Finally, because the IJ's factfinding was tethered to Suriel's credible testimony and generalized evidence in the country reports, the court held that "the BIA's labeling of the IJ's factfinding as 'speculative' does not bring the BIA's decision within the ambit of clear error review."

- [Zheng v. Sessions](#)

No. 16-2615, 2018 WL 2383532 (2d Cir. May 25, 2018) (unpublished) (Credibility)

The Second Circuit granted the PFR and remanded, concluding that the discrepancies between Zheng's testimony and that of a subsequent witness were "not sufficiently dramatic as to fall outside the universe of discrepancies for which explanations should be sought" for the purpose of a credibility determination.

Fourth Circuit

- [Guevara-Solorzano v. Sessions](#)

No. 16-2434, 2018 WL 2339443 (4th Cir. May 24, 2018) (Aggravated Felony; CIMT)

The Fourth Circuit denied the PFR, concluding that Guevara-Solorzano's 1995 conviction for unlawful possession of marijuana with intent to manufacture, deliver, or sell in violation of Tennessee Code § 39-17-417 was for an illicit trafficking in a controlled substance aggravated felony under the modified categorical approach. The court also concluded that this conviction constituted a CIMT under the modified categorical approach because it requires a culpable mental state and involves reprehensible conduct. Finally, the court affirmed the BIA's determination that Guevara-Solorzano is ineligible for relief under former Section 212(c) of the Act because one of the CIMT convictions that renders him removable pursuant to Section 237(a)(2)(A)(ii) of the Act occurred after the repeal of Section 212(c) in 1996, holding that [Matter of Balderas](#), 20 I&N Dec. 389 (BIA 1991) was entitled to Chevron deference.

Seventh Circuit

- [Melnik v. Sessions](#)

No. 15-2212, 2018 WL 2377798 (7th Cir. May 25, 2018) (Asylum-PSG)

The Seventh Circuit denied the PFR, concluding that "business owners in the Ukraine who have been extorted by criminal elements and not protected by the government" was not a legally cognizable particular social group, and that the petitioners (a married couple) did not establish a nexus between small-business-group membership and their targeting by the criminal group. The court also held that the Board did not abuse its discretion in denying the petitioners' motion to reopen based on changed country conditions.

Eighth Circuit

- [Rubio v. Sessions](#)

No. 17-1902, 2018 WL 2376476 (8th Cir. May 25, 2018) (Conviction)

The Eighth Circuit denied the PFR, concluding that Rubio's two convictions for Missouri municipal ordinance violations, namely for leaving the scene of an accident and for driving with excessive blood alcohol content under Columbia, Mo., Code §§ 14-91, 14-613, were misdemeanor "convictions" as defined under section 101(a)(48)(A) of the Act, rendering Rubio ineligible for Temporary Protected Status (TPS).

Ninth Circuit

- [Cornejo-Villagrana v. Sessions](#)

No. 13-72185 (9th Cir. May 30, 2018) (Aggravated Felony; Domestic Violence)

The Ninth Circuit granted Cornejo-Villagrana's petition for rehearing and withdrew its precedent decision in [Cornejo-Villagrana v. Sessions](#), 870 F.3d 1099 (9th Cir. Sept. 14, 2017), which held that misdemeanor domestic violence assault against a spouse under Ariz. Rev. Stat. §§ 13-1203 and 13-3601 was a crime of violence aggravated felony under 18 U.S.C. § 16(a) and a crime of domestic violence for purposes of section 237(a)(2)(E) of the Act under the modified categorical approach.

- [Franco v. Sessions](#)

No. 15-71484, 2018 WL 2409484 (9th Cir. May 29, 2018) (unpublished) (In Absentia)

The Ninth Circuit granted the PFR and remanded, holding that Franco's denial of receiving actual notice was not "inherently unbelievable," Franco could not be deemed to have constructive notice of his NTA because it was sent to the business address of a notario who had filed an asylum application for Franco without his knowledge or consent, and no relevant statutory presumption of proper service applies because no section 239(a)(1)(F) address was provided.

Tenth Circuit

- [United States v. Deiter](#)

No. 17-2159, 2018 WL 2345638 (10th Cir. May 24, 2018) (Aggravated Felony)

The Tenth Circuit concluded that aiding and abetting (18 U.S.C. § 2) federal bank robbery (18 U.S.C. § 2113(a)) constitutes a "violent felony" under the elements clause of the ACCA, which is analogous to 18 U.S.C. § 16(a).